

CONSORTIUM MODEL

(Accumulation of Expenses Approach)

(JUNE 15, 2000)

TECHNOLOGY INVESTMENT AGREEMENT

BETWEEN

(INSERT CONSORTIUM NAME AND ADDRESS)

AND

THE DEFENSE ADVANCED RESEARCH PROJECTS AGENCY
3701 NORTH FAIRFAX DRIVE
ARLINGTON, VA 22203-1714

CONCERNING

(INSERT RESEARCH AND DEVELOPMENT EFFORT)

Agreement No.: MDA972-0*-3-00**

ARPA Order No.:

Total Amount of the Agreement: \$(INCLUDES CONSORTIUM AND GOVERNMENT FUNDING)

Total Estimated Government Funding of the Agreement: \$

Funds Obligated: \$

Authority: 10 U.S.C. § 2371

Line of Appropriation:

AA

\$

This Agreement is entered into between the United States of America, hereinafter called the Government, represented by The Defense Advanced Research Projects Agency (DARPA), and the (INSERT CONSORTIUM NAME) pursuant to and under U.S. Federal law.

FOR (INSERT CONSORTIUM NAME)

FOR THE UNITED STATES OF AMERICA
THE DEFENSE ADVANCED RESEARCH

(Signature)

(Signature)

(Name, Title)

(Date)

(Name, Title)

(Date)

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ARTICLE I: SCOPE OF THE AGREEMENT

A. Background

1. (THIS PARAGRAPH(S) DESCRIBES THE VISION OF THE PROGRAM AND SHOULD ANSWER THE FOLLOWING QUESTIONS: WHAT IS THE AGREEMENT ALL ABOUT? WHAT IS THE CURRENT TECHNOLOGICAL SITUATION? WHAT MAKES THIS PROGRAM A “CRITICAL TECHNOLOGY” EFFORT? WHY IS THE CURRENT TECHNOLOGY NOT SUFFICIENT? WHY IS IT NECESSARY FOR THE GOVERNMENT TO SUPPORT INDUSTRY IN ADDRESSING THIS SITUATION? WHAT ARE THE ISSUES OF PARTICULAR IMPORTANCE TO THE ISSUING AGENCY? WHAT ARE THE DUAL-USE (MILITARY AND COMMERCIAL) APPLICATIONS? WHAT IS THE MARKET POTENTIAL? WHAT ARE THE COMMERCIALIZATION GOALS? IF THE PROGRAM IS SUCCESSFUL, THEN WHAT? WHERE DO WE GO FROM HERE? IF THIS COLLABORATION IS SUCCESSFUL, WHAT WILL WE HAVE ACCOMPLISHED?)

B. Definitions

1. (DEFINITIONS FOR SUCH TERMS AS “CONSORTIUM”, “PARTIES”, “PROGRAM”, “CONSORTIUM MEMBERS”, ETC. SHALL BE PROVIDED HERE.)

C. Scope

1. The Consortium shall perform a coordinated research and development program (Program) designed to develop (INSERT RESEARCH AND DEVELOPMENT EFFORT). The research shall be carried out in accordance with the Statement of Work incorporated in this Agreement as Attachment 1. The Consortium shall submit or otherwise provide all documentation required by Attachment 2, Report Requirements.

2. The Consortium shall be paid for each Payable Milestone accomplished in accordance with the Schedule of Payments and Payable Milestones set forth in Attachment 3 and the procedures of Article V. Both the Schedule of Payments and the Funding Schedule set forth in Attachments 3 and 4 respectively may be revised or updated in accordance with Article III.

3. The Government and the Consortium (Parties) estimate that the Statement of Work of this Agreement can only be accomplished with the Consortium aggregate resource contribution of \$ (INSERT DOLLAR AMOUNT) from the effective date of this Agreement through (INSERT NUMBER OF MONTHS) () months thereafter. The Consortium intends and, by entering into this Agreement, undertakes to cause to be provided these funds. Consortium contributions will be provided as detailed in the Funding Schedule set forth in Attachment 4. If either DARPA or the Consortium is unable to provide its respective total contribution, the other party may reduce its project funding by a proportional amount.

D. Goals/Objectives

1. The goal of this Agreement is (INSERT GOAL(S) OF AGREEMENT).

2. The Government will have continuous involvement with the Consortium. The Government will also obtain access to research results and certain rights in data and patents pursuant to Articles VII and VIII. DARPA and the Consortium are bound to each other by a duty of good faith and best research effort in achieving the goals of the Consortium. This Agreement reflects the collaborative

document identified as “Articles of Collaboration for (INSERT NAME OF CONSORTIUM),” which document binds Consortium Members.

3. This Agreement is an “other transaction” pursuant to 10 U.S.C. § 2371. The Parties agree that the principal purpose of this Agreement is for the Government to support and stimulate the Consortium to provide its best efforts in advanced research and technology development and not for the acquisition of property or services for the direct benefit or use of the Government. This Agreement is not intended to be, nor shall it be construed as, by implication or otherwise, a partnership, a corporation, or other business organization.

ARTICLE II: TERM

A. Term of this Agreement

The Program commences upon the date of the last signature hereon and continues for (INSERT NUMBER OF MONTHS) () months. If all funds are expended prior to the (INSERT NUMBER OF MONTHS) ()-month duration, the Parties have no obligation to continue performance and may elect to cease development at that point. Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than specified herein, shall be given effect, notwithstanding this Article.

B. Termination Provisions

Subject to a reasonable determination that the program will not produce beneficial results commensurate with the expenditure of resources, either Party may terminate this Agreement by written notice to the other Party, provided that such written notice is preceded by consultation between the Parties. In the event of a termination of the Agreement, it is agreed that disposition of Data developed under this Agreement, shall be in accordance with the provisions set forth in Article VIII, Data Rights. The Government, acting through the Agreements Officer, and the Consortium, acting through its Consortium Management Committee, will negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination. Failure of the Parties to agree to a reasonable adjustment will be resolved pursuant to Article VI, Disputes. The Government has no obligation to pay the Consortium beyond the last completed and paid milestone if the Consortium, acting through its Consortium Management Committee, decides to terminate.

C. Extending the Term

The Parties may extend by mutual written agreement the term of this Agreement if funding availability and research opportunities reasonably warrant. Any extension shall be formalized through modification of the Agreement by the Agreements Officer and the Consortium Administrator.

ARTICLE III: MANAGEMENT OF THE PROJECT

A. Consortium Members

Consortium Members, as set forth in the Articles of Collaboration of the Consortium, are:

(LIST CONSORTIUM MEMBERS)

B. Consortium Management Committee (CMC)

1. The CMC shall be comprised of one voting representative from each Consortium Member, and in accordance with the Consortium Articles of Collaboration, bind the Consortium Members. The following CMC decisions are subject to DARPA approval:

- (a) Changes to the Articles of Collaboration if such changes substantially alter the relationship of the Parties as originally agreed upon when the Agreement was executed;
- (b) Changes to, or elimination of, any DARPA funding allocation to any Consortium Member as technically and/or financially justified;
- (c) Technical and/or funding revisions to the Agreement; and
- (d) Admission of additional or replacement Consortium Members.

2. The CMC is responsible for establishing a schedule of regular technical meetings to be held on a quarterly basis. The CMC shall notify all Consortium Members and the DARPA Agreements Officer's Representative of the established meeting schedule and, in the event of changes to this schedule, shall notify all Consortium Members and the DARPA Agreements Officer's Representative thirty (30) calendar days prior to the next scheduled meeting.

3. A quorum is required of the Program Managers (or designees) representing the Consortium Members and the DARPA Agreements Officer's Representative (or designee) at quarterly technical meetings. All technical decisions shall be made by (MAJORITY/CONSENSUS/ETC.) vote of the CMC and the DARPA Agreements Officer's Representative.

C. Management and Program Structure

Technical and program management of the coordinated research program established under this Agreement shall be accomplished through the management structures and processes detailed in this Article.

1. The CMC shall be responsible for the overall management of the Consortium including technical, programmatic, reporting, financial and administrative matters.

2. The DARPA Agreements Officer's Representative shall fully participate in all meetings of the CMC. Other Government personnel as deemed appropriate by the DARPA Agreements Officer's Representative may also participate in the technical portion of these meetings.

D. Program Management Planning Process

The program management and planning process shall be subject to quarterly and annual reviews with inputs and review from the CMC and the DARPA Agreements Officer's Representative.

1. Initial Program Plan: The Consortium will follow the initial program plan that is contained in the Statement of Work (Attachment 1), and the Schedule of Payments and Payable Milestones (Attachment 3).

2. Overall Program Plan Annual Review

(a) The CMC, with DARPA Agreements Officer's Representative participation and review, will prepare an overall Annual Program Plan in the first quarter of each Agreement year. (For this purpose, each consecutive twelve (12) month period from (and including) the month of execution of this Agreement during which this Agreement shall remain in effect shall be considered an "Agreement Year.") The Annual Program Plan will be presented and reviewed at an annual site review concurrent with the appropriate quarterly meeting of the CMC which will be attended by the Consortium Members, the DARPA Agreements Officer's Representative, Senior DARPA management or other DARPA program managers and personnel as appropriate. The CMC, with DARPA participation and review, will prepare a final Annual Program Plan.

(b) The Annual Program Plan provides a detailed schedule of research activities, commits the Consortium to use its best efforts to meet specific performance objectives, includes forecasted expenditures and describes the Payable Milestones. The Annual Program Plan will consolidate all prior adjustments in the research schedule, including revisions/modifications to payable milestones. Recommendations for changes, revisions or modifications to the Agreement which result from the Annual Review shall be made in accordance with the provisions of Article III, Section E.

E. Modifications

1. As a result of quarterly meetings, annual reviews, or at any time during the term of the Agreement, research progress or results may indicate that a change in the Statement of Work and/or the Payable Milestones, would be beneficial to program objectives. Recommendations for modifications, including justifications to support any changes to the Statement of Work and/or the Payable Milestones, will be documented in a letter and submitted by the CMC to the DARPA Agreements Officer's Representative with a copy to the DARPA Agreements Officer. This documentation letter will detail the technical, chronological, and financial impact of the proposed modification to the research program. The CMC shall approve any Agreement modification. The Government is not obligated to pay for additional or revised Payable Milestones until the Payable Milestones Schedule (Attachment 3) is formally revised by the DARPA Agreements Officer and made part of this Agreement.

2. The DARPA Agreements Officer's Representative shall be responsible for the review and verification of any recommendations to revise or otherwise modify the Agreement Statement of Work, Schedule of Payments or Payable Milestones, or other proposed changes to the terms and conditions of this Agreement.

3. For minor or administrative Agreement modifications (e.g. changes in the paying office or appropriation data, changes to Government or Consortium personnel identified in the Agreement, etc.) no signature is required by the Consortium.

ARTICLE IV: AGREEMENT ADMINISTRATION

Unless otherwise provided in this Agreement, approvals permitted or required to be made by DARPA may be made only by the DARPA Agreements Officer. Administrative and contractual matters under this Agreement shall be referred to the following representatives of the parties:

DARPA: (INSERT NAME) (Agreements Officer) (INSERT TELEPHONE NUMBER)

CONSORTIUM: (INSERT NAME) (Consortium Administrator) (INSERT TELEPHONE NUMBER)

Technical matters under this Agreement shall be referred to the following representatives:

DARPA: (INSERT NAME) (Agreements Officer's Representative) (INSERT TELEPHONE NUMBER)

CONSORTIUM: (INSERT NAME) (INSERT TITLE) (INSERT TELEPHONE NUMBER)

Each party may change its representatives named in this Article by written notification to the other party.

ARTICLE V: OBLIGATION AND PAYMENT

A. Obligation

1. The Government's liability to make payments to the Consortium is limited to only those funds obligated under this Agreement or by modification to the Agreement. DARPA may incrementally fund this Agreement.

2. If modification becomes necessary in performance of this Agreement, pursuant to Article III, paragraph E, the DARPA Agreements Officer and Consortium Administrator shall execute a revised Schedule of Payable Milestones consistent with the then current Program Plan.

B. Payments

1. In addition to any other financial reports provided or required, the CMC shall notify the DARPA Agreements Officer immediately if any contribution from a Consortium Member is not made as required.

2. Prior to the submission of invoices to DARPA by the Consortium Administrator, the Consortium shall have and maintain an established accounting system which complies with Generally Accepted Accounting Principles, and with the requirements of this Agreement, and shall ensure that appropriate arrangements have been made for receiving, distributing and accounting for Federal funds. The Parties recognize that as a conduit, the Consortium does not incur nor does it allocate any indirect costs of its own to the Consortium Member cost directly incurred pursuant to this Agreement. Consistent

with this, an acceptable accounting system will be one in which all cash receipts and disbursements are controlled and documented properly.

3. The CMC shall document the accomplishments of each Payable Milestone by submitting or otherwise providing the Payable Milestones Report required by Attachment 2, Part D. The Consortium shall submit an original and one (1) copy of all invoices to the Agreements Officer for payment approval. After written verification of the accomplishment of the Payable Milestone by the DARPA Agreements Officer's Representative, and approval by the Agreements Officer, the invoices will be forwarded to the payment office within fifteen (15) calendar days of receipt of the invoices at DARPA. Payment approval for the final Payable Milestone will be made after reconciliation of DARPA funding with actual Consortium contributions. Payments will be made by DFAS-IN, Defense Agency Financial Services, Attn: DFAS-IN/AKB (Vendor Pay), 8899 East 56th Street, Indianapolis, IN 46249-1325 within fifteen (15) calendar days of DARPA's transmittal. Subject to change only through written Agreement modification, payment shall be made to the address of the Consortium Administrator set forth below.

4. Address of Payee: (INSERT NAME AND ADDRESS OF PAYEE)

5. Government funds shall be maintained in an interest-bearing account prior to disbursement to Consortium Members. This account shall not be in U. S. Treasury Notes. Any interest earned shall be remitted annually to the DARPA Agreements Officer, or designee. Interest payments shall be made payable to the U. S. Treasury. Interest amounts less than \$250 per year may be retained by the Consortium for administrative expenses.

6. Payments shall be made in the amounts set forth in Attachment No. 3, provided the DARPA Agreements Officer's Representative has verified the accomplishment of the Payable Milestones. It is recognized that the quarterly accounting of current expenditures reported in the "Quarterly Business Status Report" submitted in accordance with Attachment No. 2 is not necessarily intended or required to match the Payable Milestones until submission of the Final Report; however, payable milestones shall be revised during the course of the program to reflect current and revised projected expenditures.

7. Limitation of Funds: In no case shall the Government's financial liability exceed the amount obligated under this Agreement.

8. Financial Records and Reports: The Consortium and Consortium Members shall maintain adequate records to account for all funding under this Agreement and shall maintain adequate records to account for Consortium Member funding provided under this Agreement. Upon completion or termination of this Agreement, whichever occurs earlier, the Consortium Administrator shall furnish to the Agreements Officer a copy of the Final Report required by Attachment 2, Part E. The Consortium's and Consortium Members' relevant financial records are subject to examination or audit on behalf of DARPA by the Government for a period not to exceed three (3) years after expiration of the term of this Agreement. The Agreements Officer or designee shall have direct access to sufficient records and information of the Consortium and Consortium Members, to ensure full accountability for all funding under this Agreement. Such audit, examination, or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party.

ARTICLE VI: DISPUTES

A. General

Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article.

B. Dispute Resolution Procedures

1. Any disagreement, claim or dispute between DARPA and the Consortium concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may be raised only under this Article.

2. Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. In no event shall a dispute, disagreement or misunderstanding which arose more than three (3) months prior to the notification made under subparagraph B.3 of this article constitute the basis for relief under this article unless the Director of DARPA in the interests of justice waives this requirement.

3. Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party (through the DARPA Agreements Officer or Consortium Administrator, as the case may be) in writing of the relevant facts, identify unresolved issues, and specify the clarification or remedy sought. Within five (5) working days after providing notice to the other Party, the aggrieved Party may, in writing, request a joint decision by the DARPA Senior Procurement Executive and senior executive (no lower than (INSERT A LEVEL OF EXECUTIVE FAR ENOUGH REMOVED FROM THE PROGRAM TO MAINTAIN A GREATER LEVEL OF IMPARTIALITY) level) appointed by the CMC of the Consortium. The other Party shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified that a decision has been requested. The DARPA Senior Procurement Executive and the senior executive shall conduct a review of the matter(s) in dispute and render a decision in writing within thirty (30) calendar days of receipt of such written position. Any such joint decision is final and binding.

4. In the absence of a joint decision, upon written request to the Director of DARPA, made within thirty (30) calendar days of the expiration of the time for a decision under subparagraph B.3 above, the dispute shall be further reviewed. The Director of DARPA may elect to conduct this review personally or through a designee or jointly with a senior executive (no lower than (INSERT A LEVEL OF EXECUTIVE FAR ENOUGH REMOVED FROM THE PROGRAM TO MAINTAIN A GREATER LEVEL OF IMPARTIALITY) level) appointed by the CMC of the Consortium. Following the review, the Director of DARPA or designee will resolve the issue(s) and notify the Parties in writing. Such resolution is not subject to further administrative review and, to the extent permitted by law, shall be final and binding.

C. Limitation of Damages

Claims for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of DARPA funding disbursed as of the time the dispute arises. In no event shall DARPA be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

ARTICLE VII: PATENT RIGHTS

A. Definitions

1. “Invention” means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.
2. “Made” when used in relation to any invention means the conception or first actual reduction to practice of such invention.
3. “Practical application” means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is capable of being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
4. “Subject invention” means any invention of a Consortium Member conceived or first actually reduced to practice in the performance of work under this Agreement.

B. Allocation of Principal Rights

Unless the Consortium shall have notified DARPA (in accordance with subparagraph C.2 below) that the Consortium does not intend to retain title, the Consortium shall retain the entire right, title, and interest throughout the world to each subject invention consistent with the provisions of the Articles of Collaboration, this Article, and 35 U.S.C. § 202. With respect to any subject invention in which the Consortium retains title, DARPA shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the subject invention throughout the world. Notwithstanding the above, the Consortium may elect as defined in its Articles of Collaboration to provide full or partial rights that it has retained to Consortium Members or other parties.

C. Invention Disclosure, Election of Title, and Filing of Patent Application

1. The Consortium shall disclose each subject invention to DARPA within four (4) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to DARPA shall be in the form of a written report and shall identify the Agreement under which the invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. The Consortium shall also submit to DARPA an annual listing of subject inventions.
2. If the Consortium determines that it does not intend to retain title to any such invention, the Consortium shall notify DARPA, in writing, within eight (8) months of disclosure to DARPA. However, in any case where publication, sale, or public use has initiated the one (1)-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by DARPA to a date that is no more than sixty (60) calendar days prior to the end of the statutory period.

3. The Consortium shall file its initial patent application on a subject invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. The Consortium may elect to file patent applications in additional countries (including the European Patent Office and the Patent Cooperation Treaty) within either ten (10) months of the corresponding initial patent application or six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.

4. Requests for extension of the time for disclosure election, and filing under Article VII, paragraph C, may, at the discretion of DARPA, and after considering the position of the Consortium, be granted.

D. Conditions When the Government May Obtain Title

Upon DARPA's written request, the Consortium shall convey title to any subject invention to DARPA under any of the following conditions:

1. If the Consortium fails to disclose or elects not to retain title to the subject invention within the times specified in paragraph C of this Article; provided, that DARPA may only request title within sixty (60) calendar days after learning of the failure of the Consortium to disclose or elect within the specified times.

2. In those countries in which the Consortium fails to file patent applications within the times specified in paragraph C of this Article; provided, that if the Consortium has filed a patent application in a country after the times specified in paragraph C of this Article, but prior to its receipt of the written request by DARPA, the Consortium shall continue to retain title in that country; or

3. In any country in which the Consortium decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a subject invention.

E. Minimum Rights to the Consortium and Protection of the Consortium's Right to File

1. The Consortium shall retain a non-exclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Consortium fails to disclose the invention within the times specified in paragraph C of this Article. The Consortium license extends to the domestic (including Canada) subsidiaries and affiliates, if any, of the Consortium Members within the corporate structure of which the Consortium Member is a party and includes the right to grant licenses of the same scope to the extent that the Consortium was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of DARPA, except when transferred to the successor of that part of the business to which the invention pertains. DARPA approval for license transfer shall not be unreasonably withheld.

2. The Consortium domestic license may be revoked or modified by DARPA to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404. This license shall not be revoked in that field of use or the geographical areas in which the Consortium has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of

DARPA to the extent the Consortium, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.

3. Before revocation or modification of the license, DARPA shall furnish the Consortium a written notice of its intention to revoke or modify the license, and the Consortium shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

F. Action to Protect the Government's Interest

1. The Consortium agrees to execute or to have executed and promptly deliver to DARPA all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Consortium elects to retain title, and (ii) convey title to DARPA when requested under paragraph D of this Article and to enable the Government to obtain patent protection throughout the world in that subject invention.

2. The Consortium agrees to require, by written agreement, that employees of the Members of the Consortium working on the Consortium, other than clerical and non-technical employees, agree to disclose promptly in writing, to personnel identified as responsible for the administration of patent matters and in a format acceptable to the Consortium, each subject invention made under this Agreement in order that the Consortium can comply with the disclosure provisions of paragraph C of this Article. The Consortium shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

3. The Consortium shall notify DARPA of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.

4. The Consortium shall include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under Agreement No. MDA972-0*-3-00** awarded by DARPA. The Government has certain rights in the invention."

G. Lower Tier Agreements

The Consortium shall include this Article, suitably modified, to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, development, or research work.

H. Reporting on Utilization of Subject Inventions

The Consortium agrees to submit, during the term of the Agreement, an annual report on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Consortium or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Consortium subcontractor(s), and such other data and information as the agency may reasonably specify. The Consortium also agrees to provide additional reports as may be requested by DARPA in connection with any march-in proceedings undertaken by DARPA in accordance with paragraph J of this Article. Consistent with 35 U.S.C. §

202(c)(5), DARPA agrees it shall not disclose such information to persons outside the Government without permission of the Consortium.

I. Preference for American Industry

Notwithstanding any other provision of this clause, the Consortium agrees that it shall not grant to any person the exclusive right to use or sell any subject invention in the United States or Canada unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention shall be manufactured substantially in the United States or Canada. However, in individual cases, the requirements for such an agreement may be waived by DARPA upon a showing by the Consortium that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that, under the circumstances, domestic manufacture is not commercially feasible.

J. March-in Rights

The Consortium agrees that, with respect to any subject invention in which it has retained title, DARPA has the right to require the Consortium, an assignee, or exclusive licensee of a subject invention to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Consortium, assignee, or exclusive licensee refuses such a request, DARPA has the right to grant such a license itself if DARPA determines that:

1. Such action is necessary because the Consortium or assignee has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the subject invention;
2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Consortium, assignee, or their licensees;
3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Consortium, assignee, or licensees; or
4. Such action is necessary because the agreement required by paragraph (I) of this Article has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such Agreement.

ARTICLE VIII: DATA RIGHTS

A. Definitions

1. “Government Purpose Rights”, as used in this article, means rights to use, duplicate, or disclose Data, in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only.
2. “Unlimited Rights”, as used in this article, means rights to use, duplicate, release, or disclose, Data in whole or in part, in any manner and for any purposes whatsoever, and to have or permit others to do so.

3. “Data”, as used in this article, means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information and does not include subject inventions included under Article VII.

B. Allocation of Principal Rights

1. This Agreement shall be performed with mixed Government and Consortium funding. The Parties agree that in consideration for Government funding, the Consortium intends to reduce to practical application items, components and processes developed under this Agreement.

2. The Consortium agrees to retain and maintain in good condition until (INSERT NUMBER OF YEAR) () years after completion or termination of this Agreement, all Data necessary to achieve practical application. In the event of exercise of the Government’s March-in Rights as set forth under Article VII or subparagraph B.3 of this article, the Consortium, acting through its Consortium Management Committee, agrees, upon written request from the Government, to deliver at no additional cost to the Government, all Data necessary to achieve practical application within sixty (60) calendar days from the date of the written request. The Government shall retain Unlimited Rights, as defined in paragraph A above, to this delivered Data.

3. The Consortium agrees that, with respect to Data necessary to achieve practical application, DARPA has the right to require the Consortium to deliver all such Data to DARPA in accordance with its reasonable directions if DARPA determines that:

(a) Such action is necessary because the Consortium or assignee has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the technology developed during the performance of this Agreement;

(b) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Consortium, assignee, or their licensees; or

(c) Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Consortium, assignee, or licensees.

4. With respect to Data delivered pursuant to Attachment 2 (**and listed below**), the Government shall receive Government Purpose Rights, as defined in paragraph A above. With respect to all Data delivered, in the event of the Government’s exercise of its right under subparagraph B.2 of this article, the Government shall receive Unlimited Rights.

C. Marking of Data

Pursuant to paragraph B above, any Data delivered under this Agreement shall be marked with the following legend:

Use, duplication, or disclosure is subject to the restrictions as stated in Agreement MDA972-0*-3-00** between the Government and the Consortium.

D. Lower Tier Agreements

The Consortium shall include this Article, suitably modified to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

ARTICLE IX: FOREIGN ACCESS TO TECHNOLOGY

This Article shall remain in effect during the term of the Agreement and for (INSERT NUMBER OF YEARS) () years thereafter.

A. Definition

1. “Foreign Firm or Institution” means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

2. “Know-How” means all information including, but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.

3. “Technology” means discoveries, innovations, Know-How and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, maskworks, and copyrights developed under this Agreement.

B. General

The Parties agree that research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR pt. 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.)

C. Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions

1. In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs C.2, C.3, and C.4 below shall apply to any transfer of Technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of Technology. Transfers do not include:

- (a) sales of products or components, or

- (b) licenses of software or documentation related to sales of products or components, or
- (c) transfer to foreign subsidiaries of the Consortium Members for purposes related to this Agreement, or
- (d) transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this Agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement.

2. The Consortium shall provide timely notice to DARPA of any proposed transfers from the Consortium of Technology developed under this Agreement to Foreign Firms or Institutions. If DARPA determines that the transfer may have adverse consequences to the national security interests of the United States, the Consortium, its vendors, and DARPA shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the Consortium.

3. In any event, the Consortium shall provide written notice to the DARPA Agreements Officer's Representative and Agreements Officer of any proposed transfer to a foreign firm or institution at least sixty (60) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of the Consortium's written notification, the DARPA Agreements Officer shall advise the Consortium whether it consents to the proposed transfer. In cases where DARPA does not concur or sixty (60) calendar days after receipt and DARPA provides no decision, the Consortium may utilize the procedures under Article VI, Disputes. No transfer shall take place until a decision is rendered.

4. In the event a transfer of Technology to Foreign Firms or Institutions which is NOT approved by DARPA takes place, the Consortium shall (a) refund to DARPA funds paid for the development of the Technology and (b) the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Technology throughout the world for Government an any and all other purposes, particularly to effectuate the intent of this Agreement. Upon request of the Government, the Consortium shall provide written confirmation of such licenses.

D. Lower Tier Agreements

The Consortium shall include this Article, suitably modified, to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

ARTICLE X: TITLE AND DISPOSITION OF PROPERTY

A. Definitions

In this article "property" means any tangible personal property other than property actually consumed during the execution of work under this agreement.

B. Title to Property

No significant items of property are expected to be acquired under this Agreement. Title to each item of property acquired under this Agreement with an acquisition value of \$5,000 or less shall vest in the Consortium upon acquisition with no further obligation of the Parties unless otherwise determined by the Agreements Officer. Should any item of property with an acquisition value greater than \$5,000 be required, the Consortium shall obtain prior written approval of the Agreements Officer. Title to this property shall also vest in the Consortium upon acquisition. The Consortium shall be responsible for the maintenance, repair, protection, and preservation of all property at its own expense.

C. Disposition of Property

At the completion of the term of this Agreement, items of property with an acquisition value greater than \$50,000 shall be disposed of in the following manner:

1. Purchased by the Consortium at an agreed-upon price, the price to represent fair market value, with the proceeds of the sale being returned to DARPA; or
2. Transferred to a Government research facility with title and ownership being transferred to the Government; or
3. Donated to a mutually agreed University or technical learning center for research purposes; or
4. Any other DARPA-approved disposition procedure.

OR

ARTICLE X: TITLE AND DISPOSITION OF PROPERTY

A. Definitions

In this article “property” means any tangible personal property other than property actually consumed during the execution of work under this agreement.

B. Title to Property

The Consortium will acquire property with an acquisition value greater than \$5,000 under this Agreement as set forth in Attachment * to this Agreement which is necessary to further the research and development goals of this Program and is not for the direct benefit of the Government. Title to this property shall vest in the Consortium upon acquisition. Title to any other items of property acquired under this Agreement with an acquisition value of \$5,000 or less shall vest in the Consortium upon acquisition with no further obligation of the Parties unless otherwise determined by the Agreements Officer. Should any other item of property with an acquisition value greater than \$5,000 be required, the Consortium shall obtain prior written approval of the Agreements Officer. Title to this property shall also vest in the Consortium upon acquisition. The Consortium shall be responsible for the maintenance, repair, protection, and preservation of all property at its own expense.

C. Disposition of Property

At the completion of the term of this Agreement, items of property set forth in Attachment * or any other items of property with an acquisition value greater than \$5,000 shall be disposed of in the following manner:

1. Purchased by the Consortium at an agreed-upon price, the price to represent fair market value, with the proceeds of the sale being returned to DARPA; or
2. Transferred to a Government research facility with title and ownership being transferred to the Government; or
3. Donated to a mutually agreed University or technical learning center for research purposes; or
4. Any other DARPA-approved disposition procedure.

ARTICLE XI: CIVIL RIGHTS ACT

This Agreement is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000-d) relating to nondiscrimination in Federally assisted programs. Each Consortium Member company has signed an Assurance of Compliance with the nondiscriminatory provisions of the Act. The Parties recognize that since the Consortium has no employees, that compliance is the responsibility of each Consortium Member.

ARTICLE XII: ORDER OF PRECEDENCE

In the event of any inconsistency between the terms of this Agreement and language set forth in the Consortium's Articles of Collaboration, the inconsistency shall be resolved by giving precedence in the following order: (1) The Agreement, (2) Attachments to the Agreement, (3) Consortium Articles of Collaboration.

ARTICLE XIII: EXECUTION

This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions among the Parties, whether oral or written, with respect to the subject matter hereof. This Agreement may be revised only by written consent of the CMC and DARPA Agreements Officer. This Agreement, or modifications thereto, may be executed in counterparts each of which shall be deemed as original, but all of which taken together shall constitute one and the same instrument.

STATEMENT OF WORK

(Initial Program Plan)

Task 1:

REPORT REQUIREMENTS

A. QUARTERLY REPORT

On or before ninety (90) calendar days after the effective date of the Agreement and quarterly thereafter throughout the term of the Agreement, the Consortium Management Committee (CMC) shall submit or otherwise provide a quarterly report. Two (2) copies shall be submitted or otherwise provided to the DARPA Agreements Officer's Representative, one (1) copy shall be submitted or otherwise provided to the DARPA Agreements Officer and one (1) copy shall be submitted or otherwise provided to DARPA/(INSERT PROGRAM OFFICE), Attn: Assistant Director for Program Management. The report will have two (2) major sections.

1. Technical Status Report. The technical status report will detail technical progress to date and report on all problems, technical issues or major developments during the reporting period. The technical status report will include a report on the status of consortium collaborative activities during the reporting period.

2. Business Status Report. The business status report shall provide summarized details of the resource status of this Agreement, including the status of contributions by the Consortium participants. This report will include a quarterly accounting of current expenditures as outlined in the Annual Program Plan. Any major deviations, over plus or minus 10%, shall be explained along with discussions of the adjustment actions proposed. The report will also include an accounting of any interest earned on Government funds. The Consortium is reminded that interest in amounts greater than \$250 per year is not expected to accrue under this Agreement. In the event that this interest does accrue on Government funds, the Consortium is required to provide an explanation for the accrual in the business report. Depending on the circumstances, the Payable Milestones may require adjustment.

B. ANNUAL PROGRAM PLAN DOCUMENT

The CMC shall submit or otherwise provide to the DARPA Agreements Officer's Representative one (1) copy of a report which describes the Annual Program Plan as described in Article III, Section D. This document shall be submitted not later than thirty (30) calendar days following the Annual Site Review as described in Article III, Section D.

C. SPECIAL TECHNICAL REPORTS

As agreed to by the Consortium and the DARPA Agreements Officer's Representative, the CMC shall submit or otherwise provide to the DARPA Agreements Officer's Representative one (1) copy of special reports on significant events such as significant target accomplishments by Consortium Members, significant tests, experiments, or symposia.

D. PAYABLE MILESTONES REPORTS

The CMC shall submit or otherwise provide to the DARPA Agreements Officer's Representative documentation describing the extent of accomplishment of Payable Milestones. This information shall be as required by Article V, paragraph B and shall be sufficient for the DARPA Agreements Officer's Representative to reasonably verify the accomplishment of the milestone of the event in accordance with the Statement of Work.

E. FINAL REPORT (NOTE: The Final Report is the last Payable Milestone for the completed Agreement.)

1. The CMC shall submit or otherwise provide a Final Report making full disclosure of all major developments by the Consortium upon completion of the Agreement or within sixty (60) calendar days of termination of this Agreement. With the approval of the DARPA Agreements Officer's Representative, reprints of published articles may be attached to the Final Report. Two (2) copies shall be submitted or otherwise provided to the DARPA Agreements Officer's Representative and one (1) copy shall be submitted or otherwise provided to DARPA/(INSERT PROGRAM OFFICE), Attn: Assistant Director for Program Management. One (1) copy shall be submitted to the Defense Technical Information Center, Attn: DTIC-BCS, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060-0944.

2. The Final Report shall be marked with a distribution statement to denote the extent of its availability for distribution, release, and disclosure without additional approvals or authorizations. The Final Report shall be marked on the front page in a conspicuous place with the following marking:

"DISTRIBUTION STATEMENT B. Distribution authorized to U.S. Government agencies only to protect information not owned by the U.S. Government and protected by a contractor's "limited rights" statement, or received with the understanding that it not be routinely transmitted outside the U.S. Government. Other requests for this document shall be referred to DARPA/Technical Information Officer."

F. EXECUTIVE SUMMARY

The CMC shall submit a one to two page executive-level summary of the major accomplishments of the Agreement and the benefits of using the "other transactions" authority pursuant to 10 U.S.C. § 2371 upon completion of the Agreement. This summary shall include a discussion of the actual or planned benefits of the technologies for both the military and commercial sectors. Two (2) copies shall be submitted to the DARPA Agreements Officer.

SCHEDULE OF PAYMENTS AND PAYABLE MILESTONES

<u>TASK</u>	<u>MONTH</u>	<u>PAYABLE MILESTONES</u>	<u>DARPA</u> <u>PAYMENT</u>	<u>CONSORTIUM</u> <u>PAYMENT</u>
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1

FUNDING SCHEDULE

A. PROJECTED PROGRAM FUNDING COMMITMENTS

	<u>DARPA Funding</u>	<u>Consortium Contribution</u>
FY 0*	\$	\$
FY 0*	\$	\$
FY 0*	\$	\$
TOTALS	\$_____	\$_____

DARPA funding shall be applied toward the following expenses: **(list types of expenses)**.

B. CONSORTIUM MEMBER CONTRIBUTIONS

<u>Member</u>	<u>Contribution</u>	<u>Cash*</u>	<u>In-kind**</u>
Company A	\$	\$	\$
Company B	\$	\$	\$
Company C	\$	\$	\$
Company D	\$	\$	\$
	_____	_____	_____
TOTALS	\$	\$	\$

*Cash contributions consist of ... **(list types of contributions)**.

In-kind contributions consist of ... **(list types of contributions but also include the basis for determining the in-kind value).

LIST OF GOVERNMENT AND CONSORTIUM REPRESENTATIVES

GOVERNMENT: (NAME)
 DARPA/OFFICE
 3701 N. Fairfax Drive
 Arlington, VA 22203-1714
 phone: (703) 696-****
 FAX: (703) 696-****
 Email: *****@darpa.mil

(NAME)
 DARPA/OFFICE
 3701 N. Fairfax Drive
 Arlington, VA 22203-1714
 phone: (703) 696-****
 FAX: (703) 696-****
 Email: *****@darpa.mil

CONSORTIUM: (NAME)
 (ORGANIZATION)
 (ADDRESS)
 phone:
 FAX:
 Email:

(NAME)
 (ORGANIZATION)
 (ADDRESS)
 phone:
 FAX:
 Email: